



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 30 2005

Honorable Michael Varney, Mayor
City of Torrington
P.O. Box 250
Torrington, Wyoming 82240

Re: Complaint and Notice of
Opportunity for Hearing

Dear Mayor Varney:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" ("complaint") filed against the City of Torrington ("City"), under Section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that the City violated the Interim Compliance Plan ("ICP") of the January 10, 2001 Administrative Order, Docket Number SDWA-8-01-07, by using water from well 5 during a period when well 5 was required to be removed from service. The violation is specifically set out in the complaint. We are also enclosing a copy of the Consolidated Rules of Procedure for this proceeding, 40 C.F.R. part 22.

The City has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the City does not file a written answer to this complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. The City may request a hearing in its answer. The City has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the City requests a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by counsel.



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EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized via a Consent Agreement signed by the parties and submitted for approval and incorporation into a Final Order by the Regional Judicial Officer. The issuance of a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.

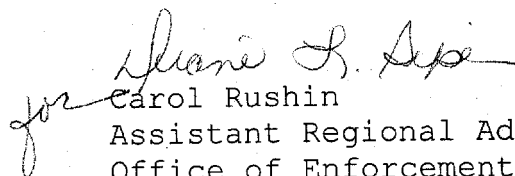
A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with, the adjudicatory hearing process.

Continued noncompliance with the requirements of the Administrative Order may result in referral of this matter to the Department of Justice.

If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Thomas E. Sitz, Enforcement Attorney, who can be reached at 800/227-8917 extension 6918.

We urge your prompt attention to this matter.

Sincerely,

for Carol Rushin

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures (2)



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Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lloyd Peterson, Chair
Goshen County Commissioners
P.O. Box 160
Torrington, WY 82240

Re: Notice of Complaint and Notice of
Opportunity for Hearing Against
the City of Torrington

Dear Mr. Peterson:

Pursuant to section 1414(a)(2)(B) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(a)(2)(B), the Environmental Protection Agency (EPA) is required to notify an appropriate locally elected official of any federal enforcement action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

EPA is issuing a Complaint and Notice of Opportunity for Hearing ("complaint") under section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), to the City of Torrington ("the City") in Goshen County, Wyoming. EPA alleges that the City violated the Interim Compliance Plan ("ICP") requirements of a January 10, 2001 Administrative Order ("AO"), Docket Number SDWA-08-2001-07, which requires, *inter alia*, compliance with the National Primary Drinking Water Regulations ("NPDWRs"). More specifically, EPA alleges that the City violated the ICP of the AO by using water from well 5 during a period when that well was required to be removed from service.


A copy of this complaint is enclosed for your information. The complaint does not require any response or action by the County Commissioners.



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If you have questions specific to the violation or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at (800) 227-8917 extension 6481 or Thomas E. Sitz, Enforcement Attorney, who can be reached at (800) 227-8917 extension 6918.

Sincerely,

for 
Carol Rushin

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2005 DEC 30 PM 12:29

IN THE MATTER OF:

City of Torrington
Torrington, WY
PWS ID# WY56000164

Respondent

Proceedings under section 1414(g)
of the Safe Drinking Water Act,
42 U.S.C. § 300g-3(g)

Docket No. SDWA-08-2006-0012

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("Act"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the Act authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$27,500¹, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the Act.

Complainant is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or

¹ In an action for violations occurring after March 15, 2004, a penalty of up to \$27,500 is authorized. See 40 C.F.R. § 19.4.

Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice").

GENERAL ALLEGATIONS

1. The City of Torrington (Respondent) is a municipality and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the City of Torrington Water System (the "System"), located in Goshen County, Wyoming for the provision to the public of piped water for human consumption through pipes or other constructed conveyances.
3. The System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.

5. The System is currently supplied solely by a ground water source consisting of five wells, three of which are treated for nitrate by reverse osmosis. All water is treated with continuous disinfection. The System serves approximately 6,000 persons per day.
6. Over one hundred samples collected from Respondent's drinking water well field from 1989 to December 2000 exceeded the nitrate maximum contaminant level (MCL) of 10 milligrams per liter.
7. The consumption of water with nitrate levels in excess of the 10 mg/L MCL has been responsible for serious methemoglobinemia and mortality in some infants under the age of approximately six months. Infants are considered the most sensitive members of the population to nitrate, based on acute toxicity following ingestion of water containing nitrate.
8. On January 10, 2001, EPA issued an Administrative Order, Docket No. SDWA-08-2001-07 ("AO"), to Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations ("NPDWRs") (40 C.F.R. part 141).
9. Based on the findings detailed in the AO, EPA concluded that Respondent's drinking water system did not reliably and consistently meet the MCL for nitrate as of January 10, 2001.

10. The AO requires Respondent, *inter alia*, to achieve compliance with the NPDWRs that EPA found Respondent had violated.

SPECIFIC ALLEGATIONS

11. The Interim Compliance Plan ("ICP") section of the AO requires, *inter alia*, that:

Until EPA determines in writing that Respondent is reliably and consistently providing drinking water below the MCL for nitrate:

1. Respondent shall collect samples every two weeks, upon the effective date of this Order, to determine compliance with the MCL for nitrate for all wells that are currently in use, or will be used within the next month, as a source of the Respondent's public water supply.
2. If any sampling result indicates an exceedance of the MCL for nitrate contaminants, Respondent shall remove the well from service immediately upon notification of the sample result.
3. Before any well may be returned to service after a sampling result indicates an exceedance of the MCL for nitrate, one of the following shall be achieved:
 - a. A confirmation sample is collected within 24 hours and the average of the initial and

confirmation samples is less than 10 mg/L for nitrate [40 CFR § 141.23(f) and (g)]; or

b. Four consecutive weekly samples indicate concentrations of less than 10 mg/L for nitrate; or

c. Installation and continuous operation of treatment, allowed by 40 CFR § 141.62, and sample results demonstrate that the source meets the MCL for nitrate.

AO at pp. 12-13 (emphasis supplied).

12. To date, EPA has not made a written determination that Respondent is reliably and consistently providing drinking water below the MCL for nitrate. Therefore, the provisions of the AO's ICP quoted in paragraph 11 remain in full force and effect.
13. Well 5 was removed from service on June 9, 2004, after sampling established that its drinking water exceeded the nitrate MCL.
14. No sampling of water from well 5 was done for nitrate MCL compliance purposes from August 2004 through July 2005.
15. On July 25, 2005, EPA received information that water from well 5 had been used for drinking water purposes July 21-22, 2005 without first following the return to service sampling requirements of the AO.

16. In its August 24, 2005 response to EPA's August 11, 2005 written information request, Respondent submitted a certified statement from Mr. Troxel in which he stated, "So at about 8 p.m. on the 21st [of July 2005] I opened the isolation valve at well 5 [which would allow water from well 5 into the drinking water distribution system] and turned the well on." Mr. Troxel further stated that well 5 remained on and the isolation valve opened until it was closed by another city employee at approximately 9:30 the next morning, July 22, 2005.
17. From July 21, 2005 at approximately 8:00 p.m. to July 22, 2005 at approximately 9:30 a.m., Respondent provided water from well 5 to the Torrington drinking water distribution system, without first following the return to service sampling requirements of the AO.
18. Respondent violated paragraph 2 of the ICP of the AO by delivering water from well 5 for approximately 12 ½ hours during a period when well 5 was required to be removed from service.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

Section 1414(g) (3) of the Act, 42 U.S.C. § 300g-3(g) (3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500 for violation of an administrative order issued under section 1414(g) (1) of the Act. The proposed penalty has been determined in accordance with section 1414 of the Act, 42 U.S.C.

§ 300g-3. For purposes of determining the penalty to be assessed, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time.

In this case, EPA considered that: 1) nitrate is an acute contaminant particularly harmful to infants, 2) the population put at risk is large because of the population size served by the System, 3) the AO specifically provides well start up and return to service sampling requirements, and 4) notwithstanding the clear and express requirements of the AO, Respondent's employee disregarded those AO requirements. Accordingly, EPA proposes to assess an administrative civil penalty of Five Thousand Dollars (\$5,000) against Respondent for one day of violation of the AO.

TERMS OF PAYMENT FOR QUICK RESOLUTION
(40 C.F.R. § 22.18)

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to the Quick Resolution provision of the Consolidated Rules of Practice (40 C.F.R. § 22.18). If such payment is made within 30 calendar days of receipt of this complaint, no answer need be filed. If Respondent elects to pay the penalty according to the Quick Resolution provision, payment must be made by

City of Torrington
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certified or cashier's check payable to "Treasurer, United States of America," and remitted to:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA. 15251

A copy of the check must be mailed simultaneously to the attorney listed below and to the EPA Regional Hearing Clerk:

Tina Artemis
Region 8 Hearing Clerk (8RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), a respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that Respondent is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c).

If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the Act to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, Respondent must include in its answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings, and an Administrative Law Judge will preside.

Respondent's answer must be in writing. An original and one copy of the answer must be filed with the EPA Regional Hearing Clerk at the address below:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and a copy of the answer must be served on EPA's Attorney of record in this case:

Thomas E. Sitz
Enforcement Attorney (8ENF-L)
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

FAILURE TO FILE AN ANSWER

To avoid entry of a default order against Respondent pursuant to 40 C.F.R. § 22.17, which may assess the full amount of the penalty proposed in this complaint, Respondent must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. Respondent's answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondent has any knowledge. Respondent's answer shall state: (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

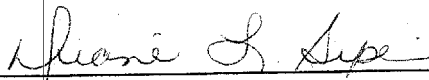
SETTLEMENT CONFERENCE

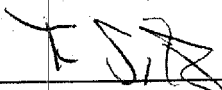
EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement

conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. A request for a settlement conference, or any questions that Respondent may have regarding this complaint, should be directed to the attorney listed below.

Dated this 30th day of December 2005.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.


for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice


Thomas E. Sitz
Enforcement Attorney (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
303-312-6918
sitz.thomas@epa.gov
fax: 303-312-6953

IN THE MATTER OF:

City of Torrington

DOCKET NUMBER:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and that a true copy of the same, along with a copy of the Consolidated Rules of Practice, 40 C.F.R. part 22, was sent CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Honorable Michael Varney
Mayor, City of Torrington
P.O. Box 250
Torrington, Wyoming 82240

Date: DEC 30 2005

By: Dayle De Arvil
Dayle De Arvil